

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number: EB-09-MA-0089
)	
Christopher M. Myers)	NAL/Acct. No: 201032600003
)	
Lauderhill, Florida)	FRN: 0020022315
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 8, 2010

Released: July 12, 2010

By the Resident Agent, Miami Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Christopher M. Myers (“Mr. Myers”) apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (“Act”),¹ by operating an unlicensed radio transmitter on the frequency 95.9 MHz in Lauderhill, Florida. We conclude, pursuant to Section 503(b) of the Act,² that Mr. Myers is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On August 14, 2008, the Enforcement Bureau’s Miami Office (“Miami Office”) issued a Notice of Unlicensed Operation (“NOUO”) to Mr. Myers for operating an FM broadcast station on the frequency 91.7 MHz from his residence in a condominium building in Lauderhill, Florida without a license. The NOUO warned him that unlicensed operation of a radio station violated the Act and the Commission’s Rules, and that continued operation could subject Mr. Myers to further enforcement action. The Miami Office received the return receipt for the NOUO, which was signed by Mr. Myers.

3. On July 21, 2009, in response to a complaint that Mr. Myers was operating an unlicensed station at his residence in Lauderhill, Florida, agents from the Miami Office used direction-finding techniques to locate the source of broadcast transmissions on the frequency 95.9 MHz to a residential condominium building in Lauderhill, Florida – the same building from which Mr. Myers previously operated an unlicensed radio station on 91.7 MHz. The agents took field strength measurements and determined that the signals being broadcast exceeded the limits allowed for operation under Part 15 of the Commission’s Rules (“Rules”),³ and therefore required a license. A review of the Commission’s records revealed that Mr. Myers did not have a license for the operation of a radio station on the frequency 95.9 MHz in Lauderhill, Florida.

¹ 47 U.S.C. § 301.

² 47 U.S.C. § 503(b).

³ Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 µV/m at three meters. 47 C.F.R. § 15.239. The measurements made on July 21, 2009, indicated that the signal was 3,784 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

4. After receiving another complaint about an unlicensed station on frequency 95.9 MHz in Lauderhill, Florida, agents from the Miami Office used direction-finding techniques on February 4, 2010 and again on March 7, 2010 to locate the source of broadcast transmissions on 95.9 MHz. The agents found the source of the broadcast transmissions in the same condominium building in Lauderhill, Florida, previously identified in August 2008 and July 2009. The agents took field strength measurements and determined that the signals being broadcast on each of these dates exceeded the limits allowed for operation under Part 15 of the Rules and therefore required a license.⁴ A review of the Commission's records again revealed that Mr. Myers did not have a license for the operation of a radio station on the frequency 95.9 MHz in Lauderhill, Florida.

5. Moreover, on March 7, 2010, the agents from the Miami Office inspected the unlicensed station, which was located in a condominium unit owned by Mr. Myers. The agents observed a coaxial cable that connected a roof-mounted antenna on the condominium building to an FM radio transmitter operating on the frequency 95.9 MHz located inside Mr. Myers's condominium unit. The agents also observed that Mr. Myers was the only person present inside his unit at the time of the Commission's inspection.

III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.⁵ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁶

7. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act.⁷ In the NOUO issued on August 14, 2008, the Commission first warned Mr. Myers that his operation of an unlicensed radio station violated the Act and continued operation could subject him to further enforcement action, including substantial monetary fines. Mr. Myers acknowledged receipt of the NOUO, but on three subsequent dates – July 21, 2009, February 4, 2010, and March 7, 2010 – agents from the Miami Office determined that an unlicensed radio station was operating on the frequency 95.9 MHz from Mr. Myers's residence in Lauderhill, Florida. Also, during an inspection on March 7, 2010, agents observed a coaxial cable that connected a roof-mounted antenna on the condominium building to an FM radio transmitter operating on the frequency 95.9 MHz located inside a condominium unit owned by Mr. Myers. Mr. Myers was the only person present inside the unit at the time of inspection. In addition, a review of the Commission's

⁴ The measurements made on February 4, 2010 and March 7, 2010 indicated that the signals were, respectively, 348 and 2,756 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

⁶ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁷ 47 U.S.C. § 301.

records revealed that Mr. Myers did not have a license to operate a radio station on the frequency 95.9 MHz in Lauderhill, Florida. Based on the facts and circumstances described above, we find that the apparent violation was willful. Moreover, because agents observed Mr. Myers's unlicensed operation on three separate occasions (all of which occurred after Mr. Myers received the NOUO), we find that the apparent violation was repeated.

8. Based on the evidence before us, we find that Mr. Myers apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment on the frequency 95.9 MHz in Lauderhill, Florida on July 21, 2009, February 4, 2010, and March 7, 2010, without a Commission authorization.

9. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.⁸ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁹ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Myers is apparently liable for a forfeiture in the amount of \$10,000.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314, and 1.80 of the Commission's Rules, Christopher M. Myers is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 301 of the Act.¹⁰

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Christopher M. Myers **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 270000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁸ If you have questions, please contact the Financial Operations Group Help

⁸ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80.

Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Mr. Myers shall also send electronic notification to SCR-Response@fcc.gov on the date said payment is made.

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Miami Office, PO Box 520617, Miami, FL 33152, and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to SCR-Response@fcc.gov.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Christopher M. Myers at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Steven DeSena
Resident Agent
Miami Office
South Central Region
Enforcement Bureau